

# Administrative Appeals Tribunal decisions

## Disability support pension and partner allowance: is a lump sum income?

SECRETARY TO THE DSS and  
MCLAUGHLIN  
(No. 11475)

**Decided:** 13 December 1996 by Senior Member R.D. Fayle.

The DSS sought review of a decision of the SSAT that a sum of money received by Mr and Mrs McLaughlin from the Dairy Industry Authority of Western Australia (DIA) was not 'income' which should be taken into account in calculating their disability support pension (DSP) and partner allowance entitlements.

### Facts

The McLaughlins were milk vendors for 30 years under a licence from the Western Australian Government. As part of a restructure, they were advised in February 1995 that the licence would not be renewed and it was recommended that they accept the offer by the DIA of 'financial adjustment assistance' of \$121,950 and enter into an agreement accordingly. The McLaughlins agreed and the amount of \$121,950 was received by them in two equal lump sum instalments in July and September 1995.

The agreement between the DIA and the McLaughlins described the financial assistance as a 'loan' and the McLaughlins were characterised as 'borrowers'. The McLaughlins covenanted that they would not be involved in the business of milk distribution or vending. In return, they received the 'loan'. The 'loan' was repayable with interest within 3 years after the agreement was entered into if the covenant was breached but after that period the 'loan' was not repayable. A further clause indicated that the DIA may not necessarily enforce repayment.

### The decision

The AAT found that the payment received from the DIA by the McLaughlins was not a loan because it bore none of the usual attributes of an arm's length com-

mercial loan; specifically, it was not repayable at all unless the McLaughlins were in breach of the covenants.

The question remained whether the payment was 'income'. The AAT referred to the definition of 'income' in s.8 of the *Social Security Act 1991* (the Act) which includes:

'(a) an income amount earned, derived or received by the person for the person's own use or benefit.'

An 'income amount' is defined as including valuable consideration, personal earnings, moneys or profits, whether of a capital nature or not. It may be earned, derived or received by any means or from any source (s.8(2)).

The AAT adopted the AAT decision in *Hungerford and Repatriation Commission* (1991) 59 SSR 807, following the High Court in *Read v Cth* (1988) 15 ALD 261, regarding the meaning of 'income' in the *Veterans' Entitlements Act 1986*, and hence found that the words 'valuable consideration, personal earnings, moneys or profits':

'relate to gains derived by a person as a result of the provision by that person of consideration in the form of personal exertion or other services or the disposition of property.'

The AAT concluded that the McLaughlins did not provide any personal services to the DIA or dispose of any property to the DIA under the agreement. Their milk vending business simply ceased because the licence was not renewed, and so was not disposed of under the agreement. The amount was not 'valuable consideration', being receipts not in money form but capable of being valued in money terms, nor 'profits' in a business or financial sense.

Therefore, the AAT found that the amount was not 'income' under s.8(1). It was irrelevant that it may have been a taxable capital receipt under the *Income Tax Assessment Act 1936*, as that has special provisions relating to capital gains.

The AAT did not agree with the SSAT's conclusion that the amount was an asset from the sale of their business by the McLaughlins, but agreed with the SSAT decision that the money received was not 'income' for the purposes of the Act.

### Formal decision

The AAT set aside the decision of the SSAT and directed that the Secretary reconsider the McLaughlins' entitlement to DSP and partner allowance on the basis

that the sum of \$121,950 was not 'income' as defined in s.8(1) of the Act.

[M.S.]

## Newstart allowance: overpayment, income earned derived or received

SECRETARY TO THE DSS and  
HAMILTON  
(No. 11521)

**Decided:** 24 December 1996 by B.H. Burns.

The DSS requested review of the SSAT decision of 20 October 1995, setting aside a DSS decision to raise and recover an overpayment of newstart allowance of \$6001.65. The SSAT had sent the matter back to the DSS with directions that the income to be taken into account when calculating the overpayment, was the income actually received in the fortnight. The SSAT affirmed a second decision of the DSS to raise and recover a debt of \$1351.60 of job search allowance paid between 21 October 1992 and 29 June 1993.

### The facts

The facts were agreed between the parties. Hamilton was paid newstart allowance from 3 November 1993 to 4 October 1994. He was employed by the West Adelaide Football Club (WAFC) between 15 November 1993 and 4 September 1994 to play football. The terms of employment were that if the WAFC was happy with Hamilton's performance at the end of 1994, he would be paid the gross amount of \$8000. If the Club was not happy with his performance, he would only receive a percentage of this amount. In fact, Hamilton received a number of extra payments for being 'best on field'. Throughout 1994, the WAFC gave Hamilton money to pay bills, buy equipment and pay a bond for his accommodation. These payments totalled \$2950.80. In October 1994, Hamilton received \$3129.20 which included the best and